

**DEPARTMENT OF STATE**  
**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))

**PROPOSED**

**PUBLIC NOTICE**

IN THE MATTER OF THE ADOPTION OF RULES		
CONCERNING THE IMPLEMENTATION OF		
72 DEL. LAWS CH. 402 (2000) GRANTING		
THE COMMISSION THE JURISDICTION TO		PSC REGULATION DOCKET NO. 51
GRANT AND REVOKE THE CERTIFICATES OF PUBLIC		
CONVENIENCE AND NECESSITY FOR PUBLIC		
UTILITY WATER UTILITIES (OPENED NOVEMBER 21,		
2000; REOPENED MARCH 20, 2007)		

**ORDER NO. 7254**

This 4<sup>th</sup> day of September, 2007, the Commission determines and Orders the following:

1. In 2000, this Commission regained the authority to issue Certificates of Public Convenience and Necessity (“CPCN”) to authorize entities to enter the water utility business or to allow existing water utilities to expand their operations and facilities into new service territories. See 26 Del. C. § 203C (2006 Supp.) (“§ 203C”). The Commission thereafter promulgated rules to chart how the Commission would navigate this water utility CPCN regime. See “Regulations Governing Water Utilities Including the Public Service Commission’s Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity” (adopted by PSC Order No. 5730 (June 5, 2001) (“2001 Rules”)).<sup>1</sup>

2. Earlier this year, the Commission published notice that it proposed to repeal the 2001 rules in favor of a new set of rules mapping the regime surrounding CPCNs for water utilities. See PSC Order No. 7142 (Mar. 20, 2007) (proposing new rules to supercede 2001 Rules); 10 DE Reg. 1563-1580 (April 1, 2007) (formally noticing repeal and proposed new CPCN rules). However, during the course of the proceedings before the Hearing Examiner reviewing these new rules, the Governor and General Assembly amended the provisions of § 203C. See 76 Del. Laws ch. 55 (June 28, 2007) (“chap. 55”). In the main, the amendments reworked the listed criteria for awarding a CPCN under § 203C. In particular, the amendment now obligates a utility to obtain petitions asking for water services executed by all of the landowners of each parcel to be included in a new service territory.<sup>2</sup> An exception exists for “existing” subdivisions or developments, and “unincorporated communities.” In such situations, the 2007 amendments permit a CPCN to be granted based on petitions for service signed by the landowners of a majority of the parcels within the development or community.<sup>3</sup> In addition, the amendments also

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1. Published in 5 DE Reg. 212 (July 1, 2001).

2. See 26 Del. C. § 203C(e)(1)b., as amended by chap. 55 § 1. Previously, a water utility could obtain a CPCN by presenting petitions signed by a majority of all of the landowners in the proposed service area. The amendment requires petitions for each parcel, executed by all the owners of record of the parcel. At the same time, the amendments did not disturb a utility’s ability to receive a CPCN by proffering its agreement with the developer of a new development. The subdivision must have been previously approved by the relevant governmental authority. See 26 Del. C. § 203C(e)(1)a., as carried forward by chap. 55 § 1.

3. See 26 Del. C. § 203C(e)(1)c., as amended by chap. 55 § 1.

direct that, in the case of a CPCN premised on a resolution or ordinance enacted by a county or municipality, the service territory so authorized cannot extend beyond the political boundaries of the county or municipality entering the ordinance.<sup>4</sup> Finally, in addition to making some other “technical” changes, the amendments require a municipal water authority to obtain the endorsement of the municipalities that formed it prior to seeking a CPCN to provide its water services beyond those municipalities’ borders.<sup>5</sup>

3. In light of the statutory amendments, the Hearing Examiner - at Staff’s suggestion – suspended further proceedings on the previously proposed new rules. The Commission now withdraws the proposed rule changes proposed by Order No. 7142. The recent legislative changes render some of those earlier provisions in need of further changes.

4. Instead, the Commission here proposes to adopt another set of new regulations related to CPCNs for water utilities. See Exhibit B. These new rules not only incorporate the statutory changes made in June, 2007, but also carry forward some of the same provisions, related to the administration of CPCNs, that were included in the earlier March, 2007 proposed rules.

5. The Commission proposes to repeal the 2001 Rules and adopt the revised set of rules pursuant to the authority granted by 26 Del.C. §203C(c) and 209(a). The revised rules entitled “Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities,” will supercede (and hence repeal) the 2001 Rules. They will, as did the 2001 Rules, apply to Commission-jurisdictional water utilities. Moreover, they will also govern in those instances when a governmental, municipal, or municipal authority water utility must also seek a CPCN from the Commission in order to expand its operations and facilities.<sup>6</sup>

6. In many aspects, the new rules track the form and content of the 2001 Rules. However, terms and provisions have now been added to conform to the new statutory criteria, and limitations, enacted in the 2007 amendments to § 203C. See proposed rules §§ 2.1 (definitions of “existing development,” “existing subdivision,” and “unincorporated community);” 3.9-3.11 (new criteria for CPCN); 3.12 (criteria for CPCN to municipal authority for extra-municipal service area). In addition, this new set of proposed rules includes provisions that respond to various administrative and practical issues that Staff has identified as surfacing since the adoption of the 2001 rules. For example, the new rules provide forms of notice to be sent to landowners to explain the application and the landowners’ statutory right to “opt-out.” See proposed rules §§ 10.2, 10.3.<sup>7</sup> In a similar vein, the new rules impose particular mailing requirements related to the delivery of notices to landowners. Proposed rules §§ 9.2-9.6. These mailing directives seek to ensure that the owners have actual notice that their property will be affected by the CPCN application.<sup>8</sup> The new rules also impose an obligation on water utilities to retain, for five years, materials related to each application for a Certificate. This retention obligation will help to make sure that the appropriate documents are available if later disputes might arise about a particular Certificate. Proposed rules § 11.6.

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4. See 26 Del. C. § 203C(e)(1)d., as amended by chap. 55 § 1.

5. See 26 Del. C. § 203C(n), as added by chap. 55 § 6. See 16 Del. C. ch. 14 (describing formation and powers of municipal water and sewer authorities).

6. See 26 Del. C. § 203C(a) (2006 Supp.) (municipalities, governmental agencies, water authorities, and water districts are within the scope of water utilities required to obtain Certificates except the CPCN regime is not applicable where the municipal utility expands to serve within an area recently annexed by a municipality).

7. The 2007 statutory amendments limit the opt-out option to CPCN applications premised on landowner petitions under § 203C(e)(1)(b). & § 203C(e)(1)c. Thus, in the case of a CPCN premised on an agreement with a developer or an ordinance enacted by a county or municipality, the affected landowner is entitled to notice of the CPCN application but cannot exercise any opt-out option. See 26 Del. C. § 203C(j), as amended by chap. 55 § 2.

8. The statutory provisions of 26 Del. C. § 203C(d)(1) & (e)(1) (2006 Supp.) call for delivery of notices to landowners by certified mail (or its equivalent). However, consistent with the “due process” principles articulated in Jones vs. Flowers, 547 U.S. 220 (2006), the new rules call for a follow-up mailing of notices by simple first-class mail to the landowner’s best known address in instances where the earlier certified mail attempt has been returned as unsuccessful.

7. In several instances, the proposed new rules go beyond administrative detail. First, the proposed new rules require the applying non-governmental water utility to certify that it will actually provide water services to, or have water system facilities available, the proposed service area within three years. Proposed rules § 3.13. And if such certification fails to come true, the new rules then provide a mechanism for the Commission to determine whether the utility should be able to retain the CPCN in order to provide water services to the area. Proposed rules §§ 12.1-12.6. Staff has proposed these provisions. According to Staff, this process for certifying to actual service dovetails with the heart of the CPCN process: to authorize a water utility to “extend[] or expand[] . . . its business or operations.” See 26 Del. C. § 203C(a) (2006 Supp.) (emphasis added). In addition, as Staff sees it, the goal of the certification - to ensure that services follow the CPCN - is consistent with the text of § 203C, which conditions the grant of a CPCN for an area on either the developer signing a “service agreement,” the landowners “requesting water service,” or a governmental body “request[ing], direct[ing], or authoriz[ing] the applicant to provide water utility services.” (all emphasis added.) In each of the instances, the statutory text speaks of the Certificate being a vehicle for meeting an articulated desire to have water “service” in the service area, not a device for the utility to accumulate parcels in order to form a large, exclusive “franchise” area.<sup>9</sup>

8. Second, and also reflective of the statutory focus on “service” territory, the proposed new rules require that a service territory sought on the basis of 26 Del. C. § 203C(e)(1)b. be comprised of either a single parcel or multiple contiguous parcels to be served by a common system or main extension. Proposed rules § 7.4. The Commission believes that this linkage of parcels within a service territory will foster efficient service territories.

9. The Commission now proposes to adopt the new water utility CPCN Rules attached as Exhibit “B.” It solicits comments on any of the proposed provisions, including those adding bureaucratic details or the new regulatory section related to the certification of “actual service” to the service territory. While not limiting the scope of any comments, the Commission also seeks input from water utilities and others on the following issues:

(a) Is the three-year period for providing service in a new service area reasonable in light of water utilities’ actual historical experiences?;

(b) Should the new rules more explicitly define “existing development”, “existing subdivision,” and “unincorporated community;”? and

(c) Do the provisions of 26 Del. C. § 203C(e)(1)c. preclude a water utility from utilizing the provisions of 26 Del. C. § 203C(e)(1)b. to obtain a CPCN to serve one or more parcels in an existing development, existing subdivision, or an unincorporated community?

If a water utility believes the three-year period proposed for in the actual service certification provision (proposed rules §§ 3.13 & 12.0) is unreasonable, the utility should provide an appropriate time frame to be utilized in that process. It should provide supporting data from its own experience to support its proffered time frame.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 29 Del. C. § 10118(a), the Commission hereby withdraws the notice of repeal and rule revisions proposed by PSC Order No. 7142 (Mar. 20, 2007), and published as proposed regulations at 10 Delaware Register of Regulations 1563-1580 (April 1, 2007). The Commission requests that the Registrar of Regulations publish notice of such withdrawal in the Delaware Register of Regulations.

2. That for the reasons set forth in the body of this Order, and pursuant to 26 Del. C. §§ 209(a)(1) & 203C(c) and 29 Del. C. § 10113(a), the Commission now again proposes to repeal its “Regulations Governing Water Utilities Including the Public Service Commission’s Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity (adopted by PSC Order No. 5730 (June 5, 2001)), and to adopt as a replacement for such earlier rules the “Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities,” attached to this Order as Exhibit “B.”

3. That, pursuant to 29 Del. C. §§ 1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the Delaware Register of Regulations a copy of this Order; a copy of the current “Regulations Governing Water Utilities Including the Public Service Commission’s Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity” (Exhibit “A”) (now proposed to be repealed); and a copy of the

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9. The Commission received adverse comment about these provisions in response to similar provisions in the rules proposed by Order No. 7142. The Commission will incorporate the written comments received in response to the earlier proposed rule revisions into “the record” for this new set of proposed rules.

now proposed "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities" (Exhibit "B").

4. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as Exhibit "C," to the Registrar of Regulations for publication in the Delaware Register of Regulations. In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in The News Journal and the Delaware State News newspapers on October 1, 2007. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Department of Natural Resources and Environmental Control; (c) the State Fire Marshal; (d) the Division of Public Health; (e) the State Planning Office; and (f) each person or entity who has made a timely request for advance notice of regulation-making proceedings; (g) each water utility currently subject to the regulatory jurisdiction of the Commission; and (h) each municipal water utility, governmental water district, or municipal water and sewer authority that has previously applied for a Certificate of Public Convenience and Necessity from this Commission.

5. That, pursuant to 29 Del. C. §§ 10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before November 1, 2007. The Commission will conduct a public hearing on the proposed new regulations on November 19, 2007 beginning at 10:00 AM. The comments, documents, briefs, and data received in response to the revised rules proposed by PSC Order No. 7142 (Mar. 20, 2007) (and now withdrawn) shall be incorporated into the record in this proceeding and shall be considered by the Hearing Examiner and Commission.

6. That, pursuant to 26 Del. C. § 502 and 29 Del. C. § 10116, Hearing Examiner Ruth Ann Price is designated to supervise the comment period and to conduct the public hearing. Thereafter, Hearing Examiner Price shall organize, classify, and summarize the materials and comments and file a Report with her recommendations concerning the adoption of the new regulations. Hearing Examiner Price is specifically designated, under 26 Del. C. § 102A, the power to determine the content and manner of any further public notice that might be necessary or appropriate. Hearing Examiner Price may also conduct further proceedings, including additional hearings, as may be necessary or appropriate.

7. That Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.

8. That, pursuant to 26 Del. C. § 114, all jurisdictional water utilities are notified that they may be charged the costs of this proceeding.

9. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

Arnetta McRae, Chairman  
Joann T. Conaway, Commissioner  
Jaymes B. Lester, Commissioner  
Dallas Winslow, Commissioner  
Jeffrey J. Clark, Commissioner

**ATTEST:**

Karen J. Nickerson, Secretary

**NOTICE OF PROPOSED RULE-MAKING: AMENDMENT OF RULES FOR GRANTING and SUPERVISING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR WATER UTILITIES**

**TO: ALL WATER UTILITIES, CONSUMERS, AND OTHER INTERESTED PERSONS**

Under 26 Del.C. §203C, the Public Service Commission ("PSC") holds the authority to grant a Certificate of Public Convenience and Necessity ("CPCN") to authorize an entity to begin water utility operations or to allow an existing water utility to expand its operations or business to a new proposed service territory. This CPCN authority encompasses water utilities subject to the PSC's general regulation as well as municipal and other governmental water utilities, districts, or authorities. In 2001, the PSC adopted "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity." See 5 DE Reg. 212 (July 1, 2001). Those regulations set forth the process and criteria for reviewing,

granting, or denying requests for CPCNs filed by water utilities.

Earlier, the PSC proposed to repeal the 2001 Rules related to water utility CPCNs in favor of a proposed new set of Rules. See 10 DE Reg. 1563-1580. The Commission has now withdrawn those earlier proposed new rules.

Pursuant to 26 **Del.C.** §§203C(c) and 209(a), the PSC now proposes to repeal those 2001 rules and replace them with new "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities." As outlined in PSC Order No. 7254 (Sept. 4, 2007), the PSC believes the new rules will make improvements in the administration of the CPCN process. Initially, the proposed new rules implement the statutory changes made to the criteria for obtaining a CPCN (and the provisions of 26 **Del.C.** §203C) by 76 **Del. Laws** ch. 55 (June 28, 2007). Second, the new rules provide for more detailed requirements for notice to affected landowners of the CPCN application and provide specific requirements on the form of notice to be sent to affected landowners to inform them of their options. In addition, the new regulations add new provisions that require a water utility to certify that it will serve, or have facilities within, the new Proposed Service Area within three years and provide a procedure for the PSC to explore whether a CPCN should continue if service or facilities are not made available within such period.

You can review PSC Order No. 7254 (Sept. 4, 2007) and the proposed new rules in the October 1, 2007 issue of the *Delaware Register of Regulations*. You can also review the Order and the new regulations at the PSC's Internet website located at <http://dep.sc.delaware.gov>. Written copies of the Order and proposed regulations can be obtained at the PSC's office at the address located below, for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed repeal of the 2001 Water Utility CPCN rules and the adoption of the proposed new Water Utility CPCN rules. If you want to file any such materials, you should submit an original and ten copies of such written documents on or before November 1, 2007. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building  
Suite 100  
Dover, Delaware, 19904  
Attn: Reg. Dckt. No. 51

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or send as an attachment to an Internet e-mail addressed to [karen.nickerson@state.de.us](mailto:karen.nickerson@state.de.us).

The PSC will also conduct a public hearing on the new proposed regulations on Monday, November 19, 2007. That hearing will begin at 10:00 A.M. and will be held at the PSC's office at the address set forth above. You may also submit comments and materials at such public hearing.

If you are disabled and need assistance or help to participate in the proceedings, please contact the PSC to discuss that assistance. If you want more information or have questions, you can contact the PSC about this matter at (800) 282-8574 (toll-free in Delaware) or (302) 736-7500. Inquiries can also be sent by Internet e-mail addressed to [andrea.maucher@state.de.us](mailto:andrea.maucher@state.de.us).

## **~~REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE PUBLIC SERVICE COMMISSION'S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY~~**

### **~~10.101 Scope of Regulations.~~**

~~These regulations are intended to govern certain practices and procedures before the Delaware Public Service Commission relating to water utilities.~~

### **~~10.102 Definitions.~~**

~~As used in these regulations:~~

~~"Commission" means the Delaware Public Service Commission.~~

~~"CPCN" means a Certificate of Public Convenience and Necessity.~~

~~"DPH" means the Delaware Division of Public Health.~~

"DNREC" means the Delaware Department of Natural Resources and Environmental Control.

"Staff" means the Staff of the Delaware Public Service Commission.

"Secretary" means the Secretary of the Delaware Public Service Commission.

#### **10.103 Application for Certificate of Public Convenience and Necessity.**

(a) An application for a Certificate of Public Convenience and Necessity to begin the business of a water utility or to extend or expand the business or operations of any existing water utility shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:

(1) Contain a statement explaining the reason(s) why the Commission should grant the GPCN, and citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application;

(2) Clearly state the relief sought by the application;

(3) State the name, address, telephone number, and e-mail address (if any) of the person to be notified in the event the Staff determines there are deficiencies in the application;

(4) Contain the supporting documentation required by 26 Del.C. § 203C, including evidence that all the landowners of the proposed territory have been notified of the application;

(5) Include a complete list of county tax map parcel number(s) for the area covered by the application;

(6) Include (along with a complete list of tax map number(s)) corresponding names and addresses of property owners and a copy of all tax map(s) for the area;

(7) For any proposed extension of service, contain a certification by the applicant that the extension will satisfy the provisions of 26 Del.C. § 403C, including the following:

(i) The applicant is furnishing water to its present customers or subscribers in this State in such fashion that water pressure at every house supplied is at least 25 pounds at all times at the service connection;

(ii) The applicant shall furnish water to the house or separate location of each new customer or subscriber in this State at the pressure of at least 25 pounds at each such location or house at all times at the service connection while continuing also to supply each old customer or subscriber at the pressure of at least 25 pounds at each house at all times at the service connection;

(iii) The applicant is not subject to a finding by the appropriate federal or state regulatory authority that it has materially failed to comply with applicable safe drinking water or water quality standards; and

(iv) The applicant is not subject to any Order issued by the Commission finding that the company has materially failed to provide adequate or proper safe water services to existing customers; and

(8) For applications submitted under 26 Del.C. § 203C(e), include a statement indicating whether the applicant has determined if a majority of the landowners of the proposed territory to be served object to the issuance of a GPCN to the applicant, and the documentation relied upon to support the applicant's determination.

(b) If an application for a GPCN involves a water utility project or service that requires the review, approval or authorization of any other state or federal regulatory body, including DNREC, the State Fire Marshal or DPH, the application to the Commission shall so state and shall include the following:

(1) A statement of the current status of such application;

(2) If the application to the other regulatory body or bodies has already been filed, a copy of any permit, order, certificate, or other document issued by the regulatory body relating thereto; and

(3) If such an application or amendment thereof is filed with another state or federal regulatory body or a determination is made by any such regulatory body subsequent to the date of filing the GPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document that has been issued relating thereto shall be filed with the Commission.

(c) An applicant for a GPCN—other than a municipality or other governmental subdivision—shall provide with the application (if not presently on file with the Commission) the following:

(1) A corporate history including dates of incorporation, subsequent acquisitions and/or mergers;

(2) A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates. Furnish a chart or charts which depict(s) the inter-company relationships;

~~(3) A map identifying all areas, including all towns, cities, counties, and other government subdivisions to which service is already provided;~~

~~(4) A statement identifying any significant element of the application which, to the applicant's knowledge, represents a departure from prior decisions of the Commission;~~

~~(5) Annual reports to stockholders for applicant, its subsidiaries, and its parent for the last two years;~~

~~(6) The applicant's audited financial statements, 10K's, and all proxy material for the last two years; and~~

~~(7) Any reports submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceedings wherein an issue has been raised about the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of safe, adequate and reliable water service, including the water quality of water provided to existing customers.~~

~~(d) A municipality or other governmental subdivision applying for a CPGN shall provide with the application (if not presently on file with the Commission) the statement and documents identified in subsections (c)(3), (4) and (7) hereof.~~

~~(e) After a completed application has been filed and during the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration of an application, including the provision of safe, adequate, and reliable water service.~~

~~(f) Supporting documentation not filed with the application must be made available for Staff inspection upon request.~~

#### **~~10.104 Additional requirements for an application filed by a new water utility.~~**

~~(a) If the applicant for a CPGN is a new water utility that has not previously been awarded a CPGN in Delaware, the application, in addition to meeting the requirements of section 10.103, shall include the following:~~

~~(1) Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal safe drinking requirements and that it has, or will procure, adequate supplies of water to meet demand, even in drought conditions, by maintaining supply sufficient to meet existing and reasonably anticipated future peak daily and monthly demands;~~

~~(2) A certified copy of the applicant's certificate of incorporation;~~

~~(3) Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and~~

~~(4) A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.~~

~~(b) If the applicant for a CPGN is a new water utility that is an unincorporated proprietorship, the applicant shall be subject to a rebuttal presumption that the applicant lacks the financial, operational, and managerial capacity to comply with the requirements for a CPGN.~~

#### **~~10.105 Review of application; deficiencies in the application.~~**

~~(a) The Staff shall review all CPGN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty one days after the date of filing, specifically identify any deficiencies in the application, and immediately request the Secretary to promptly notify the applicant of the alleged deficiencies. The applicant shall have thirty days from the date of the receipt of the notice from the Secretary of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.~~

~~(b) Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 Del. C. §203C(h). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these regulations.~~

~~(c) Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice, such informal review and comment not to be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its~~

Staff.

**~~10.106 Filing of application with DNREC, the State Fire Marshal, and DPH; coordination and cooperation.~~**

~~An applicant for a CPGN shall file a copy of the application and the supporting documentation required by section 10.103(a)(5) and (6) with DNREC, the State Fire Marshal, and DPH within three days of filing the same with the Commission. The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting immediate written comment as to whether they are aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable drinking water service to existing customers. The Staff shall coordinate and cooperate with DNREC, the State Fire Marshal, and DPH during the process of reviewing an application for a CPGN. The Staff shall also coordinate and cooperate with other interested state, local, and federal authorities.~~

**~~10.107 Provision of notice to all landowners of the proposed territory.~~**

~~(a) Pursuant to the provisions of 26 Del.C. §203C(d)(1) and (e)(1), prior to filing the application with the Commission, the applicant shall provide written notice to all landowners of the proposed territory of the anticipated filing of the application.~~

~~(b) The written notice required by 26 Del.C. 203C(d)(1) and (e)(1) shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application.~~

**~~10.108 Landowners who object, opt out, and/or request a public hearing; time limits; extension of time.~~**

~~(a) In proceedings involving an application submitted under 26 Del.C. §203C(e), any landowner whose property, or any part thereof, is located within the proposed territory to be served shall be permitted to (i) object to the issuance of the CPGN; (ii) opt out of inclusion in the territory; and/or (iii) request a public hearing. The applicant shall inform the Commission of the name and address of all landowners who notify the applicant of their objection to the issuance of the CPGN, their intention to opt out of inclusion in the territory, and/or request a public hearing, and shall file with the Commission any written notices received from such landowners. The Commission shall maintain records identifying all landowners who have provided written notice of their objection to the issuance of the CPGN, their intention to opt out of inclusion in the territory, and/or request a public hearing, and shall make such records available to the applicant.~~

~~(b) A landowner shall notify the Commission, in writing, if the landowner (i) objects to the issuance of the CPGN; (ii) intends to opt out of inclusion in the territory; and/or (iii) requests a public hearing. The notice to the Commission from the landowner must be filed with the Commission within (i) sixty days from the date of the landowner's receipt of a written notice from the water utility that complies with applicable statutes and these regulations, of the landowner's inclusion in the service territory; or (ii) thirty days of the filing of the completed application, whichever period is greater. The Commission may, in the exercise of its discretion, extend the time to object, opt out, and/or request a public hearing even though the period in which to do so has expired. The Commission shall accept for filing written notices from landowners that were sent to the applicant and transmitted by the applicant to the Commission.~~

**~~10.109 Notification to all landowners of the proposed territory of their rights to object, opt out, and/or request a public hearing.~~**

~~(a) Pursuant to 26 Del.C. §203C(e), and for the purposes of notification to all landowners of the proposed territory encompassed by the CPGN, the notice sent to the landowners of the proposed territory must include, at a minimum, the following statement:~~

~~“(1) Pursuant to Title 26, §203C(e) of the Delaware Code, an application for a Certificate of Public Convenience and Necessity (CPGN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public water and we are required to inform you of certain information. The area to be served is {provide a shorthand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required.–~~

~~(2) Pursuant to current law, you may file an objection to receiving water service from {enter name of your organization}. Under Delaware law, the Public Service Commission cannot grant a~~

GPCN to {enter name of your organization} for the proposed service area, including your property, if a majority of the landowners in the proposed service area object to the issuance of the GPCN. If you object to receiving water service from {enter the name of your organization}, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a GPCN, whichever is greater.

(3) Pursuant to current law, you may also elect to opt out of inclusion in the proposed service area. The term "opt out" means that you decide that you do not want to receive water service from {enter name of your organization}, even if a majority of the landowners in the proposed service area do elect to receive water service from {enter name of your organization}. If you decide that you do not want to receive water service from {enter name of your organization} and instead wish to opt out, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a GPCN, whichever is greater.

(4) You may also request a public hearing on this matter. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a GPCN, whichever is greater.

(5) The written notice of your decision to object to the issuance of the GPCN, to opt out of receiving water service from {enter name of your organization}, and/or your written request for a public hearing, shall be sent to the Secretary of the Delaware Public Service Commission at the following address:

Secretary  
Delaware Public Service Commission  
{insert the address of the Secretary of the Delaware Public Service Commission}

(6) Any written notice you send to the Commission must include the description of the service area referred to in paragraph (1) above and the name of the applicant so the Commission will be able to identify the GPCN application to which your notice is related.

(7) Questions regarding objections, opt outs, and hearings may be directed to: {enter the name or title, and the address and telephone number of the Commission's contact person(s)}."

(b) If a landowner sends a written notice directly to the applicant, the applicant shall file the notice with the Commission.

#### **~~10.110 Suspension or revocation of GPCN for good cause.~~**

(a) Pursuant to the provisions of 26 ~~Del.C.~~ § 203C(k) and (l), the Commission may suspend or revoke a GPCN, or a portion thereof, for good cause. Good cause shall consist of:

(1) A finding by the Commission of material non-compliance by the holder of a GPCN with any provisions of Titles 7, 16, or 26 of the Delaware Code dealing with obtaining water or providing water and water services to customers, or any order or rule of the Commission relating to the same; and

(2) A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and

(3) Either (i) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (ii) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

(b) In addition to the factors required by section 10.110(a)(1), (2) and (3), the Commission may consider one or more of the following factors in determining whether to suspend or revoke a GPCN:

(1) Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or

(2) Criminal conduct on the part of the water utility; or

(3) Actual, threatened or impending insolvency of the water utility; or

(4) Persistent, serious, substantial violations of statutes or regulations governing the water utility

in addition to any finding of non-compliance required by paragraph (a)(1) above; or

(5) Failure or inability on the part of the water utility to comply with an order of any other state or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

(6) Such other factors as the Commission deems relevant to the determination to suspend or revoke a GPCN.

#### **~~10.111 Proceedings to suspend or revoke a GPCN for good cause.~~**

(a) Proceedings before the Commission to suspend or revoke a GPCN for good cause shall be conducted in accordance with the procedures set forth in 29 ~~Del.C.~~ Ch. 101, Subchapter III.

(b) Unless the Commission finds, pursuant to proceedings conducted in accordance with subsection (a) above, that (i) the conduct of a water utility poses an imminent threat to the health and safety of its customers; or (ii) a water utility is unable to provide safe, adequate, and reliable water service, the Commission will not suspend or revoke a GPCN for good cause without first affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the GPCN.

#### **~~10.112 Compliance with 29 Del. C. Ch. 101, Subchapter III.~~**

Proceedings before the Commission involving Certificates of Public Convenience and Necessity for water utilities shall be conducted in accordance with the procedures set forth in 29 ~~Del.C.~~ Ch. 101, Subchapter III, including any proceedings related to any findings under 26 ~~Del. C.~~ § 203C(f) that an applicant is unwilling or unable to provide safe, adequate, and reliable water service to existing customers, or is currently subject to such a Commission finding.

#### **~~10.113 Waiver of requirements of sections 10.103 and 10.104.~~**

The Commission may, in the exercise of its discretion, waive any of the requirements of sections 10.103 and 10.104 above.

### **Regulations Concerning Certificates Of Public Convenience And Necessity For Water Utilities**

#### **1.0 Authority and Scope of Regulations**

1.1 These regulations shall govern the process: (a) for a person or entity (as described in 26 Del.C. §203C(a)) to obtain a Certificate of Public Convenience and Necessity to begin operation as a water utility; and (b) for a water utility to obtain a Certificate of Public Convenience and Necessity to extend, expand, or enlarge its operations, business, or facilities beyond its then certificated service territory. These regulations also govern, in conjunction with the provisions of 26 Del.C. §203C, how the Commission administers, supervises, and revokes any such Certificate of Public Convenience and Necessity previously granted to a water utility.

1.2 These regulations are enacted pursuant to 26 Del.C. §§203C and 209(a).

1.3 In granting, denying, or revoking a Certificate of Public Convenience and Necessity under 26 Del.C. §203C and these regulations, the Commission shall act consistently with the procedures required by 29 Del.C. ch. 101, Subchapters III and IV.

1.4 The Commission may modify or extend any of the timing requirements set forth in these regulations so long as such timing requirement is not required by statutory provision.

1.5 The Commission may by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision.

#### **2.0 Definitions**

2.1 The following words and terms, when used in this regulation, should have the following meanings, unless the context clearly indicates otherwise:

"Commission" refers to the Public Service Commission.

"CPCN" or "Certificate" means a Certificate of Public Convenience and Necessity required by the provisions of 26 Del.C. §203C.

"DPH" refers to the Division of Public Health of the Department of Health and Social Services.

"DNREC" refers to the Department of Natural Resources and Environmental Control.

**"Existing development"** or "existing subdivision" means an aggregate of already-occupied homes or buildings within a particular geographic area:

- (a) that were constructed as part of a single-named development or subdivision;
- (b) that share common deed restrictions or covenants; or
- (c) that are governed by a common homeowners' association or similar type of body.

The existence and boundaries of such a development or subdivision may be established by a plat or subdivision map, documents reflecting common deed or conveyance restrictions, or homeowner association documents.

**"Landowner notification"** means the process for delivering to each landowner of record the relevant form of notice prescribed by either these regulations or further Commission directive.

**"Landowner of record"** shall mean each person or entity as defined and described in 26 **Del.C. §203C(j)**. A landowner of record may be identified by reference to public tax or public land records or by relevant land conveyance documents.

**"New water utility"** means, for the purposes of 26 **Del.C. §203C(e)(2)**, an entity that has not previously provided water utility services to the public within this State.

**"Postal Service"** refers to the United States Postal Service.

**"Proposed Service Area"** is equivalent to "the proposed territory to be served" and means the area in which the applicant proposes to offer and provide its water utility services. The proposed service area shall be described by reference to one or more parcels or property, identified by the relevant county tax map identification designations. If the proposed service area cannot be described by reference to parcels of property, it may be described by a metes and bounds description, or any other equivalent description capable of being mapped.

**"Record date"** means the date for determining the persons and entities who are landowners of record in the Proposed Service Area. The record date shall be a date chosen by the applicant that is no more than sixty days prior to the date of filing of the application for a CPCN.

**"SFM"** refers to the Office of the State Fire Marshal.

**"Staff"** refers to the Staff of the Commission.

**"Secretary"** refers to the Secretary of the Commission.

**"Unincorporated community"** means an aggregate of already-occupied homes or buildings lying within a particular compact unincorporated geographic area that share common community interests; and

- (a) that are commonly described as comprising a named community; or
- (b) that are identified on maps as a particular named community.

The existence and boundaries of such an unincorporated community may be established by a plat, map, census data, or post office designation.

**"Water utility"** means a person or entity as defined by 26 **Del.C. §102(8)** that is obligated to obtain a CPCN under 26 **Del.C. §203C(a)**.

### **3.0 Application for Certificate of Public Convenience and Necessity**

#### **In General**

3.1 An application for a Certificate to begin the business of a water utility, or to extend or expand the business, operations, or facilities of any existing water utility, shall be made in writing and shall be filed with the Commission.

3.2 An applicant may request, by a single application Certificates for one to five Proposed Service Areas. In the case of an application joining multiple Proposed Service Areas, the application shall contain sufficient information and documentation to establish the applicant's entitlement to a Certificate for each separate Proposed Service Area. The Commission shall separately determine for each Proposed Service Area whether to grant a Certificate for that area. However, the Commission, by a single Order, may grant a CPCN for one or more of the Proposed Service Areas that have been joined in a single application.

3.3 The CPCN application shall include all information and supporting documentation required by 26 **Del.C. §203C**, the Commission's Rules of Practice and Procedure, and these regulations. An application shall not be considered to be complete and filed until all such information and supporting documentation has been submitted to the Commission. An application shall:

3.3.1 summarize the reason(s) why the Commission should grant the CPCN for each requested Proposed Service Area;

3.3.2 provide specific citations to the statutory and regulatory provisions relied upon for a CPCN

for each Proposed Service Area:

3.3.3 identify any significant element of the application that, to the applicant's knowledge, poses a unique statutory or factual question or represents a departure from prior decisions of the Commission; and

3.3.4 prominently state the name, address, telephone number, and e-mail address of the individual to be notified concerning the contents of the application.

**Information about each Proposed Service Area**

3.4 The application shall include, for each Proposed Service Area requested:

3.4.1 a written description of the general geographic location of the area which also describes the type of area (such as a proposed development, an existing development or existing subdivision, an unincorporated community, or an aggregation of a number of parcels);

3.4.2 a general map (reflecting towns or cities, and major transportation routes) appropriately marked to show the location of each Proposed Service Area;

3.4.3 for applications premised on 26 Del.C. §203C(e)(1)c. a map, plant, or precise description of the boundaries of the existing development, existing subdivision, or unincorporated community accompanied by references to the documents or filings used to define and describe the existing development, existing subdivision, or unincorporated community

3.4.3.1 Upon request, the applicant shall provide the underlying documents or filings utilized to define and describe the existing development, existing subdivision, or unincorporated community; and

3.4.4 a listing (using county tax map parcel numbers or designations) of each parcel encompassed within the Proposed Service Area, accompanied by the name and mailing addresses of the landowner(s) of record for each such parcel as of the record date.

3.4.4.1 The listing shall conspicuously identify the tax records or land record documents utilized by the applicant to determine the name and address of each landowner of record.

3.4.4.2 The listing shall conspicuously identify the record date use for determining the landowners of record of the encompassed parcel or parcels.

3.4.4.3 For a request premised on 26 Del.C. §203C(e)(1)b., the listing shall denote each parcel where all of the landowners of record have executed a petition requesting water utility services from the applicant.

3.4.4.4 For a request premised on 26 Del.C. §203C(e)(1)b., the listing shall also indicate the applicant's calculation of the total number of parcels in the Proposed Service Area and the total number of parcels where the landowners of record have executed a petition requesting water utility services from the applicant.

**Evidence of Landowner Notification**

3.5 The application shall contain for each Proposed Service Area the documentation reflecting landowner notification as required by 26 Del.C. §203C(d)(1) or (e)(1), including:

3.5.1 copies of relevant Postal Service forms demonstrating that the applicant sent by certified mail the appropriate form of notice as required by these regulations to each landowner of record of each parcel encompassed within the Proposed Service Area;

3.5.2 copies of all materials or messages provided to the applicant by the Postal Service reflecting either delivery of the certified mail or failure of certified mail delivery because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed; and

3.5.3 a certification (or other evidence) that, for each earlier notice that was returned by the Postal Service due to a failure of certified mail delivery, the applicant then sent another copy of the required notice by first class United States mail to the best available address of the applicable landowner of record.

**Criteria for a CPCN Request**

3.6 For a request for a Proposed Service Area premised on 26 Del.C. §203C(d)(2)a., the application shall include all evidence (including reports or studies) that establish that the water sources and supplies then available in the Proposed Service Area do not meet the relevant standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.

3.7 For a request for a Proposed Service Area premised on 26 Del.C. §203C(d)(2)b., the application shall include all evidence (including reports or studies) demonstrating that the supply of water available to the Proposed Service Area is insufficient to meet the projected demand.

3.8 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)a., the application shall include a copy of a signed service agreement between the applicant and the developer of the proposed

development or subdivision, and appropriate documentation reflecting that the development or subdivision has finally been approved by the relevant county or municipal government

3.9 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)b., the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of each parcel in the Proposed Service Area. Each such petition must meet the criteria set forth in section 8.1

3.10 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)c., the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of a parcel to be encompassed by the Proposed Service Area. Each such petition must meet the criteria set forth in section 8.1. The application shall include such petitions for a majority of the parcels within the existing development, existing subdivision, or unincorporated community that constitutes the Proposed Service Area.<sup>1</sup>

3.11 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)d., the application shall include a certified copy of the resolution or ordinance from the governing body of the relevant county or municipality that requests, directs, or authorizes the applicant to provide water utility services to the Proposed Service Area. If requested, the applicant must also provide additional references to demonstrate that the county or municipality enacting the ordinance or resolution has the appropriate legal authority to authorize the provision of water utility services to the Proposed Service Area.

**Additional Criteria for a CPCN Request by a Municipal Water Authority**

3.12 If the applicant is a municipal water authority created under the provisions of Chapter 14 of title 16 of the Delaware Code, and it seeks a Proposed Service Area that lies, wholly in part, outside of the political boundaries of the municipality or municipalities that originally created such municipal authority, the application shall also include, as required by 26 Del.C. §203C(n), a certified copy of a resolution of the governing body of each such municipality requesting that the Certificate for the extra-territorial portion of the Proposed Service Area be granted.<sup>2</sup>

**Plan of Service**

3.13 An application shall include, for each Proposed Service Area, a description of how the applicant will provide water utility services to the area. In addition, the application shall include a separate certification that the applicant plans to provide its water utility services to consumers within the Proposed Service Area beginning no later than three years following the grant of a CPCN for the Area.<sup>3</sup>

**Additional Quality of Service Certifications and Information**

3.14 In the case of a request by a water utility to expand or extend its operations and business, the application shall contain a certification that the proposed extension and expansion will satisfy the provisions of 26 Del.C. §403C. The applicant shall certify that:

3.14.1 the applicant is then furnishing water to its present customers in such manner that water pressure at every connection is at least 25 pounds at all times;

3.14.2 the applicant will furnish water to each new customer in each Proposed Service Area at the pressure of at least 25 pounds at the service connection while continuing also to supply each existing customer at a pressure of at least 25 pounds at each service connection;

1. Pursuant to the provisions of 26 Del. C. § 203C(e)(1)d., the resolution or ordinance shall only entitle the applicant to a Proposed Service Area that lies within the political boundaries of the county or municipality that entered the resolution or ordinance. If the applicant is a municipality or municipal utility, and it seeks a Proposed Service Area that lies, wholly or in part, outside of the municipality's political boundaries, the applicant must, in the case of those parcels that are outside of the political boundaries, either (1) provide documentation to support a Certificate under some other provision of 26 Del. C. § 203C(d) or (e) or (2) cite another statutory provision that entitles the applicant to serve such parcels and which preempts the limitation expressed in 26 Del. C. § 203C(e)(1)d.

2. This requirement for a resolution from each municipality requesting the grant of a Certificate does not excuse the municipal water authority from establishing its entitlement to a Certificate for the Proposed Service Area outside of the municipality's boundaries under the provisions of 26 Del.C. §203C(d) or (e).

3. This requirement shall not apply in the case of a Proposed Service Area for a municipal water utility or a governmental water utility that lies within the political boundaries of the municipality or government.

3.14.3 the applicant is not then subject to a ruling, decision, or finding by any federal or state regulatory authority that found, concluded, or determined that the application materially failed to comply with applicable safe drinking water or water quality standards; and

3.14.4 the applicant is not subject to any finding or Order of the Commission that determined that the applicant materially failed to provide adequate or proper safe water services to existing customers.

3.15 If an applicant cannot supply each of the above certification, the application shall include a statement why the provisions of 26 Del.C. §403C do not apply to the applicant or the particular application.

3.16 If an application will involve a water utility project or water utility services that require the review, approval, or authorization of any other state or federal regulatory body (including DNREC, the SFM, or the DPH) the application shall also include:

3.16.1 a description of the nature of the review by the other regulatory body and current status of such review; and

3.16.2 a copy of any permit, order, certificate, approval, or other documents already issued by any other regulatory body relating to the water project or services.

3.17 If, after the filing of the application, any other state or federal regulatory body issues any permit, order, certificate, approval, or other documents related to the water project or services relevant to the application, the applicant shall promptly file such document with the Commission.

**Additional Materials to be Supplied with the Application**

3.18 Unless the following materials are already on file with, or available to, the Commission, an applicant - other than a municipal or other governmental water utility - shall provide with the application the following information:

3.18.1 a corporate or business history including dates of incorporation and subsequent acquisitions and/or mergers;

3.18.2 a complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates, including a chart of such intra- and inter-company relationships.

3.18.3 a map identifying all areas where the applicant then provides water utility services;

3.18.4 the Annual Reports provided to owners of the applicant, or to the owners of its parent or subsidiaries, over the two-year period prior to the filing of the application;

3.18.5 the audited financial statements, SEC 10K filings, and all proxy material related to the applicant for the two years prior to the filing of the application; and

3.18.6 copies of all reports submitted by the applicant within the preceding twelve months to any State or federal authority related to whether the applicant has complied with any statute, regulation, rule, or order concerning the provision of safe, adequate, and reliable water services (including the quality of water provided to existing customers).

3.19 Unless the materials are already on file with the Commission or available to the Commission, a municipal or other governmental water utility shall provide with the application the statement and documents identified in sections 3.18.3 and 3.18.6.

**4.0 Additional Requirements for an Application Filed by a New Water Utility**

4.1 If the applicant is a new water utility, the application, in addition to fulfilling the requirements of sections 3.0 through 3.19, shall also include the following:

4.1.1 a copy of the applicant's certificate of incorporation, partnership agreement, or other enabling document;<sup>4</sup>

4.1.2 materials that demonstrate that the applicant possesses the financial, operational, and managerial capacity to comply with all State and federal safe drinking requirements and that the applicant has available, or will be able to procure, an adequate supply of water (even during drought conditions) to meet reasonably anticipated peak daily and monthly demands for its water utility services;

4.1.3 a description of the plant to be utilized to provide its water utility services (including details

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4. If the business structure of the applicant is a sole proprietorship, the Commission will presume, subject to rebuttal, that the applicant lacks the financial, operational, and managerial capabilities to provide adequate water utility services. An applicant that is a sole proprietorship may provide with its application evidence to rebut this presumption and demonstrate that it will have the capabilities to provide adequate and reliable services.

as to the type and capacity of treatment facilities, cost of facilities, and the projected construction schedule);

4.1.4 a map detailing the composition, diameter, length, and location of mains and pipes to be initially installed; and

4.1.5 a projection of the number of customers to be served in the five-year period following the grant of the requested CPCN.

## **5.0 Review of the Application and Deficiencies in the Application**

5.1 An applicant may ask the Staff to informally review a draft of an application prior to its formal filing. Such informal review shall not affect or delay the filing of an application that complies with applicable statutes and these regulations.

5.2 Upon filing, the Staff shall review an application for compliance with the applicable statutory provisions and these regulations. Within thirty days after the date of filing, Staff may notify the applicant of specific deficiencies in the application. The applicant shall have thirty days from the date of the receipt of such notice to file an amended or supplemental application. The Commission may, in its discretion, extend the period for curing deficiencies in the application for an additional period of time.

5.3 If the applicant submits an amended or supplemental application, the application shall then be deemed filed on the date of such submission for the purposes of the time limits set forth in 26 Del.C. §203C(h). In the event the deficiencies identified by Staff are not cured within the time period provided, Staff may request that the Commission to reject the application.

5.4 During the period the application is pending before the Commission, the Staff may request the applicant to provide additional relevant information or documents.

## **6.0 Coordination with Other State Agencies, Counties, and Municipalities**

6.1 At the time of the filing of an application, or within three days thereafter, the applicant shall serve copies of its application on DNREC, the SFM, and the DPH.

6.2 At the time of the filing of an application, or within three days thereafter, the applicant shall also send a notice of its application, with a description of the Proposed Service Area, to the county in which the Area lies (in whole or in part).

6.3 In addition, if any parcel of land in a Proposed Service Area is located within a "future annexation area" or "future growth area" under a comprehensive plan (26 Del.C. §§101 and 702) adopted by a municipality that provides water utility services, then the applicant shall also serve a copy of the application on the municipality (or its municipal utility). The applicant shall serve such copy on the municipality (or its utility) at least thirty days prior to filing the application with the Commission. The application filed with the Commission shall include a certification of such service on the identified municipality.

6.4 During the process of reviewing an application, the Staff shall coordinate and cooperate with DNREC, the SFM, and the DPH. Staff may also coordinate and cooperate with other interested State, local, and federal authorities in reviewing the request for a CPCN.

## **7.0 Proposed Service Area**

7.1 For a request premised on 26 Del.C. §203C(d)(2)a., the Proposed Service Area shall encompass only such parcels of land that lack available water sources or supplies that meet the standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.

7.2 For a request premised on 26 Del.C. §203C(d)(2)b., the Proposed Service Area shall encompass only such parcels of land that lack available water sources or supplies sufficient to meet the projected demand for water in such parcels.

7.3 For a request premised on 26 Del.C. §203C(e)(1)a., the Proposed Service Area shall encompass only such parcels that are within the subdivision or development plat or plan that has been finally approved by the relevant county or municipal government.

7.4 For a request premised on 26 Del.C. §203C(e)(1)b., the Proposed Service Area shall encompass either:

7.4.1 a single parcel; or

7.4.2 two or more contiguous parcels that will be provided water utility services by the same stand-alone system or by the same main extension.<sup>5</sup>

7.5 For a request premised on 26 Del.C. §203C(e)(1)c., the Proposed Service Area shall encompass only such parcels of land that the governing body of the county or municipality has directed, requested, or authorized the applicant to serve.

7.5.1 For a request premised on 26 Del.C. §203C(e)(1)c., the Proposed Service Area shall encompass only such parcels of land that lie within the existing development, existing subdivision, or the unincorporated community as described and defined under § 2.1.

## **8.0 Requirements Related to 26 Del.C. §203C(e)(1)b. and c.**

8.1 For a request premised on either 26 Del.C. §203C(e)(1)b. or 26 Del.C. §203C(e)(1)c., each petition requesting water utility services from the applicant must:

8.1.1 bear the signature of each landowner of record (or a duly authorized agent) that is requesting water utility services from the applicant;

8.1.2 reflect the date for each signature by each landowner of record, which date shall not be any earlier than one year prior to the date of the filing of the application;

8.1.3 bear a printed recitation of the name of each landowner of record executing the petition;

8.1.4 describe the nature and office of the executing individual if the request is by an artificial entity;

8.1.5 identify the tax map parcel number associated with each landowner of record requesting water service; and

8.1.6 list the present mailing address and telephone number of each landowner of record that executes the request for water utility services.

8.2 If a petition under 26 Del.C. §203C(e)(1)b. or 26 Del.C. §203C(e)(1)c. involves a petition for water utility services on behalf of condominium units as defined by 26 Del.C. §203C(j), the applicant shall provide with such petition the materials required by 26 Del.C. §203C(g)(1).

8.3 If a petition for water utility services is executed by an agent of the landowner of record, the applicant shall provide with the petition evidence to demonstrate the agent's authority to act for the landowner of record.

## **9.0 Notice to Landowners in the Proposed Service Area**

9.1 Pursuant to the provisions of 26 Del.C. §203C(d)(1) and (e)(1), prior to filing the application, the applicant shall send the form of notice prescribed by these regulations to each landowner of record in the Proposed Service Area. The landowners of record shall be determined as of the record date.

9.2 The form of notice required by these regulations shall be sent to each landowner of record not more than sixty days and not less than thirty days prior to the filing of the application.

9.3 For requests premised on 26 Del.C. §203C(d)(2)a. or b., the notices shall be sent by United States certified mail, return receipt requested, with delivery restricted to the addressee.

9.4 For requests premised on 26 Del.C. §203C(e)(1)a. or d., the notices shall be sent by United States certified mail, return receipt requested, with delivery restricted to the addressee.

9.5 For requests premised on 26 Del.C. §203C(e)(1)b. or c., the notices shall be sent to those landowners of record who did not execute a petition for water services by United States certified mail, return receipt requested, and with delivery restricted to the addressee. In the case of landowners of record who did execute petitions for water service, the notices shall be sent by United States certified mail, return receipt requested.

9.6 If the Postal Service returns to the applicant any materials reflecting that, in the case of a particular landowner of record, the certified mail delivery required under sections 9.3 through 9.5 failed because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed, then the applicant shall promptly re-send the form of the required notice by first class United States mail to the best available address of that landowner of record.

9.7 The Commission, by Order, may authorize a method of providing notice to landowners of record that is equivalent to the methods set forth in sections 9.3 through 9.6.

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5. If a landowner of record removes a contiguous property from the Proposed Service Area by the exercise of the "opt-out" option available under 26 Del.C. §203C(i), the exclusion of the parcel shall not render the remaining parcels non-contiguous.

## **10.0 Form of Notice to Landowners of Record**

10.1 The notice to be sent to landowners of record in a request premised on either 26 Del.C. §203C(d)(2), 26 Del.C. §203C(e)(1)a., or 26 Del.C. §203C(e)(1)d. shall be in a form approved by Staff.

10.2 If the request is premised on 26 Del.C. §203C(e)(1)b., the form of notice sent to landowners of record must include the following statements:

"Public records list you as a landowner of the property with the following tax map parcel identification number(s): [insert tax map parcel identification number(s)]. Within sixty (60) days, [insert water utility's name] plans to file an application with the Delaware Public Service Commission ("PSC") requesting a Certificate Of Public Convenience and Necessity ("CPCN") to provide water services to an area described as [insert description of proposed service area]. [INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE AREA IT INTENDS TO SERVE. IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT. You should read this notice carefully to understand the options you have under the law in this situation.

a) You may choose to remain in the utility's proposed service territory. If you signed a petition for water services and wish to remain in the utility's proposed service territory, you may do nothing and disregard this letter.

(b) You may choose to "opt-out" of the utility's proposed service territory. You have the right to "opt-out" and have your property removed from the utility's service area. You can do this even though others in your area might desire water service from the utility. You should understand that being included in a utility's service area does not mean that public water services will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory and the well serving your drinking water needs becomes unusable, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if there is public water available to your property. On the other hand, if you elect to "opt-out" of the utility's service area, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees to be included in a new CPCN service area. Finally, you cannot "opt-out" after the Commission has granted the CPCN to the water utility.

(c) You may object to the CPCN application. If you file an objection, you need to tell the PSC why the utility has not met the law's requirements for a CPCN. You should review the law about what a utility must provide in order to obtain a CPCN (contact the PSC to obtain a copy of the law). If you file an objection, this will not also remove your property from a proposed service area. To remove your property from the service territory, you must request to "opt-out."

Under the law, the PSC is obligated to grant a CPCN to a utility to provide water services if the landowners of a parcel in the proposed service area have requested the utility's water services. Attached to this letter is a form which allows you (and other owners of the property) to exercise one or more of the options. If you wish to exercise any of the options, complete the form and return it to the PSC at the address listed below within 60 days from the date you receive this notice:

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

If you have any questions, comments or concerns, please contact the PSC at (302) 736-7500 (in Delaware, call 800-282-8574) or by Internet e-mail at <http://depssc.delaware.gov>.

10.3 If the request is premised on 26 Del.C. §203C(e)(1)c., the form of notice sent to landowners of record must include the following statements:

Public records list you as a landowner of the property with the following tax map parcel identification number(s): [insert tax map parcel identification number(s)]. Within sixty (60) days, [insert water utility's name] plans to file an application with the Delaware Public Service Commission ("PSC") requesting a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to an area described as [insert name and description of existing development, existing subdivision, or unincorporated community]. [INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE AREA IT INTENDS TO SERVE. IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT. You should read this notice carefully to understand the options you have under the law in this situation.

a) You may choose to remain in the utility's proposed service territory. If you signed a petition for water services and wish to remain in the utility's proposed service territory, or, if you did not sign a petition for water services but do not object to being included, you may do nothing and disregard this letter.

b) You may choose to "opt-out" of the utility's proposed service territory. You have the right to "opt-out" and have your property removed from the utility's service area. You can do this even though others in [insert development or community name] might desire water service from the utility. You should understand that being included in a utility's service area does not mean that public water services will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory and the well serving your drinking water needs becomes unusable, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if there is public water available to your property. On the other hand, if you elect to "opt-out" of the utility's service area, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees to be included in a new CPCN service area. Finally, you cannot "opt-out" after the Commission has granted the CPCN to the utility.

c) You may object to the Commission granting a CPCN for [insert development or community name]. If the landowners of a majority of the parcels in [insert development or community name] have not asked for water services, the PSC might deny the utility the right to serve in such area. An objection does not remove your property from the service territory; it simply reflects that you do not want the utility to provide services in the area. If you want to make

sure your property is not included in the utility's service area, you should file the "opt-out" request described above. In addition, you may object that the water utility does not have the legal right to serve the area. You should review the law about what a utility must provide in order to obtain a CPCN (contact the PSC to obtain a copy of the law). If you file such an objection, you will need to tell the PSC why the utility has not met the law's requirements for a CPCN. Again, an objection will not remove your property from a proposed service area. To remove your property from the service territory, you must request to "opt-out."

Under the law, the PSC is obligated to grant a CPCN to a utility to provide water services to an existing development, existing subdivision, or recognized community if the landowners of a majority of the parcels in such development or community have requested the utility's water services. This means that even if you have not signed a request for the utility's water services, your property may be included in the utility's service area if the landowners of more than half of the parcels have made such requests. However, if you do not want your property included in the utility's proposed service territory or if you oppose the utility providing services in the area, then you must do something under one or more of the above options within 60 days. Attached to this letter is a form which allows you (and other owners of the property) to exercise one or more of the options. If you wish to exercise any of the options, complete the form and return it to the PSC at the address listed below within 60 days from the date you receive this notice:

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

If you have any questions, comments or concerns, please contact the PSC at (302) 736-7500 (in Delaware, call 800-282-8574) or by Internet e-mail at <http://depssc.delaware.gov>.

10.4 In a request under 26 Del.C. §203C(e), the notice sent to each landowner shall also include a form of response (in a form approved by Staff) that allows the landowner to easily and plainly exercise the options available under the form of notice.

10.5 Except as the Commission might specifically approve, the applicant shall not include any other correspondence with the landowner notice required by these regulations. The exterior of the envelope for any notice shall carry language (approved by Staff) to alert the landowner of the importance of the notice.

10.6 Within twenty-one days of the filing of the application, the applicant shall also publish in two newspapers of general circulation a form of public notice of its application. The Staff shall approve a form of such public notice. The applicant shall promptly file proof of such publication with the Commission.

## **11.0 Landowner's Options to Object or "Opt-Out," and Objections from Other Interested Persons or Entities**

11.1 A landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area may object to a CPCN being granted by filing with the Commission a signed written document reflecting such objection. The objection shall set forth the reasons why the applicant is not entitled to a Certificate. Except for good cause, the written objection shall be filed with the Commission no later than twenty days after publication of the notices required under §10.6

11.2 The Commission may allow persons or entities that are not landowners of record to file an objection to an application for a CPCN. The objection shall set forth the person's or entity's interest in the matter and the reasons why the applicant is not entitled to a Certificate. Except for good cause, the objection by a non-landowner shall be filed with the Commission no later than twenty days after publication of the notices required under §10.6.

11.3 In an application premised on 26 Del.C. §203C(e)(1)b. or c., a landowner of record of a parcel that

is, in whole or in part, within a Proposed Service Area may: (a) object to the issuance of the CPCN or (b) "opt-out" and have the landowner's parcel excluded from the Proposed Service Area pursuant to 26 Del.C. §203C(i). A landowner of record may exercise one or more of the above options.

11.3.1 The applicant shall immediately inform the Commission of the name and address of each landowner of record that notifies the applicant, either verbally or in writing, that the landowner wishes to exercise any one of the options under section 11.3. The applicant shall immediately file with the Commission any written documents from a landowner that exercises any of the options in section 11.3.

11.4 At any time prior to the issuance of the CPCN premised on 26 Del.C. §203C(1)b. or c., a landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area, may file with the Commission a signed written document requesting that the landowner's parcel be excluded from the Proposed Service Area pursuant to 26 Del.C. §203C(i). A parcel will be excluded from the Proposed Service Area if any landowner of record of such parcel submits a signed "opt-out" request for exclusion of the parcel. The Commission may deny an "opt-out" request submitted by a landowner of record if the landowners of record holding, or vested with, a controlling interest in the parcel rescind, or countermand, the request to "opt-out." The other owners shall demonstrate to the Commission that they hold the authority to bind the parcel.

11.5 The Commission shall maintain a record of all written documents received from landowners of record that exercise the options available under sections 11.1 through 11.4.

11.6 An applicant shall retain all record related to an application for a Certificate for a period of five years after the date of the filing of the application. The applicant shall make such records available to the Commission upon request.

## **12.0 Conditional Grant of a CPCN for a Proposed Service Area**

12.1 A CPCN to provide water utility services to a Proposed Service Area shall be conditioned on the applicant subsequently actually providing water utility services to consumers within the Area within three years from the grant of the CPCN, consistent with the certification required to be made under section 3.13.

12.2 If at the end of three years after the grant of a CPCN the water utility is not actually providing water utility services to consumers within the Service Area granted by the CPCN, the Commission may institute a proceeding to determine whether the previously granted CPCN should lapse because of the water utility's failure to provide water utility services.

12.3 In determining whether the previously granted CPCN should lapse, the Commission may consider: (a) whether the landowners of record in the Service Area continue to endorse the water utility providing water utility services to their properties; (b) whether the utility has a reasonable plan to begin to provide water utility services in the near future; and (c) whether the Service Area supports, or is essential to, the water utility providing water services to another Service Area.

12.4 If the Commission determines that the previously granted CPCN should lapse, any water utility may then file an application for a CPCN to provide water utility services to one or more parcels encompassed by the lapsed CPCN.

12.5 A water utility granted a CPCN shall, within three years of the date of the CPCN, file a notice with the Commission reporting the date that it actually began providing water utility services to consumers in each Service Area granted by the CPCN.

12.6 The provisions of sections 12.1 through 12.5 shall not apply to a CPCN granted to a municipal water utility or a government water utility to provide water utility services to a service area in its governmental capacity. In addition, those provisions shall not apply to any Service Area granted under 26 Del.C. §203C(e)(1)d. to a non-municipal or non-governmental water utility unless the relevant governing board of the municipality or county has withdrawn or revoked its earlier request for the water utility to provide its water utility services to the Service Area.

## **13.0 Suspension or Revocation of CPCN for Good Cause**

13.1 Pursuant to the provisions of 26 Del.C. §203C(k) and (l), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:

13.1.1 a finding by the Commission that the holder of a CPCN has not materially complied with: (a) any provisions of Titles 7, 16, or 26 of the Delaware Code dealing with obtaining water or providing water and water services to customers; or (b) any order or rule of the Commission relating to the same;

13.1.2 a finding by the Commission that, to the extent practicable, service to customers will

remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and

13.1.3 either (a) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (b) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

13.2 The Commission may also consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

13.2.1 fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or

13.2.2 criminal conduct on the part of the water utility; or

13.2.3 actual, threatened or impending insolvency of the water utility; or

13.2.4 persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by section 13.1.1 above; or

13.2.5 failure or inability on the part of the water utility to comply with an Order of any other State or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

13.2.6 such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

#### **14.0 Proceedings to Suspend or Revoke a CPCN for Good Cause**

14.1 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del. C. ch. 101, Subchapters III and IV.

14.2 Unless the Commission finds, pursuant to proceedings conducted in accordance with section 14.1 above, that (a) the conduct of the water utility poses an imminent threat to the health and safety of its customers; or (b) the water utility is incapable of providing safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without initially affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.

**11 DE Reg. 465 (10/01/07) (Prop.)**